



City of Carmel

Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, October 24, 2005

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, October 24, 2005, in the Council Chambers of City Hall, Carmel, Indiana. The meeting was called to order at 6:10 PM with the Pledge of Allegiance.

Members in attendance were Kent Broach, Leo Dierckman, James Hawkins, Earlene Plavchak and Madeleine Torres, thereby establishing a quorum. Angie Conn, Christine Holmes and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mr. Dierckman moved to approve the minutes of the September 26, 2005 meeting as submitted. The motion was seconded by Mr. Hawkins and **APPROVED 5-0**.

Mrs. Conn gave the Department Report. The Board would need to suspend the rules for **Item 1h Nathan Hawkins Addition, lot 5 - Bob Wilson Consulting** for Public Notice. The Item was moved from the Hearing Officer agenda. They did have the 10 days Public Notice for the Hearing Officer, but not the 25 days Public Notice for a regular meeting. **Item 4h, 05090023 UV Ritz Charles, Reception Tent** was tabled to the November meeting.

Mr. Molitor gave the Legal Report. In regard to **Item 5h, 05090003 SU and 05090004 SU Martin Marietta Materials – Mueller Property South**, particularly **05090003 SU** for mineral extraction, there is a motion to dismiss from Tom Yedlick. As discussed in Executive Session, this is intertwined with a couple of lawsuits that are pending in which the Board is the respondent. There have been extensive settlement discussions with Mr. Yedlick and Martin Marietta, who is also an intervening party in the lawsuits. The Board was given a copy of a rough draft of a settlement agreement. He did not have an executed settlement agreement. However, the rough draft seems to provide some potential for a final settlement of those lawsuits. In paragraph 12 of the rough draft was a schedule by which the Board would hear and consider the motion to dismiss. The schedule had been discussed with Mr. Yedlick and representatives of Martin Marietta. It would call for the motion to be argued before the Board at the next meeting on November 28, 2005. It included a briefing schedule by which Mr. Yedlick would have the opportunity to submit a brief to the Department by November 8. Martin Marietta would have an opportunity to submit a response by November 15. Both sides would be able to submit proposed findings and conclusions by November 22 with Mr. Yedlick having the opportunity to submit a reply brief. The staff would forward to the Board copies of all these documents no later than November 23, several days in advance of the November 28 meeting. Under the schedule, the Board would be called upon to take a public vote upon whether or not to grant or deny the motion to dismiss on December 12. It would require a vote by the Board to schedule the special meeting on or about December 12. Representatives were present from both parties. He recommended that the Board consider adopting this schedule by which it would consider Mr. Yedlick's motion to dismiss and also to schedule a special meeting of the Board for December 12 to take a final vote on the motion to dismiss and to begin hearing the docket filed by Martin Marietta. The fourth Monday in December, which is the Board's regular meeting date, is the day after Christmas and a legal holiday.

Tom Yedlick agreed to the schedule that was worked out at the pre-hearing conference.

Zeff Weiss, Ice Miller, represented Martin Marietta. They could accommodate the schedule. He added that they would like Mr. Yedlick to sign and deliver the stipulation of dismissal for the two pending lawsuits. That is the basis upon which Martin Marietta agrees to this procedure.

Mr. Yedlick agreed to the stipulation as long as the settlement proposal was signed at this meeting.

Mr. Weiss did not have the authority to sign the document on behalf of his client. The substance of what they agreed to was that they would not object to the Board hearing Mr. Yedlick's appeal and that there would be a briefing schedule and a hearing schedule. They did not agree to the other language that is in the draft that has some legal implications that they have not agreed to. As long as Mr. Yedlick has the right to brief it and raise whatever issues he wants, they have the right to raise whatever they want in response. Some of the issues Mr. Yedlick wants to raise have been previously heard and decided by this Board. The language states Martin Marietta will be expanding their mining operations. They will have additional mining operations and they will be immediately adjacent to the existing mining operations. There are probably some legal implications of using the word expand or extend as opposed to seeking a permit for a new parcel of ground. They felt his appeal was without merit under the rules of the BZA. Their objective is to get rid of the two lawsuits. They do not want to find that he did not sign the stipulation of dismissal and they have set off on the briefing schedule and they still have two pending lawsuits.

Mr. Molitor stated that the rough draft of the settlement agreement had not had a chance to be fully reviewed by the other parties. They do not have an executed settlement agreement, but they have an opportunity for the Board to set forth a schedule under which the Board will duly consider the motion that has been filed by Mr. Yedlick. He recommended that the Board accept the schedule. The schedule is not binding. If the settlement agreement falls apart, the Board can always revisit the schedule and decide whatever it chooses.

Mr. Dierckman asked if this would allow for the two lawsuits to be eliminated and then the Board would spend their time to hear the matter instead of the Courts.

Mr. Molitor stated that it allows for the Board to have the two pending lawsuits dismissed.

Mr. Dierckman asked if the two lawsuits had been prosecuted.

Mr. Molitor stated that they had not been prosecuted. This would allow issues that might have been raised in those lawsuits, to be raised in connection with the pending petition by Martin Marietta in Item 5h in return for the dismissal of the lawsuits.

Mr. Dierckman asked if the issue was the delivery of material from outside.

Mr. Molitor stated he did not want to precisely characterize what the issues are or what arguments might be raised because he felt that was up to the parties to do so. But it does relate to whether or not the petition has been properly filed as a special use or whether it should be filed as a use variance or whether there should be some other petition filed in connection with the special use. Those are the issues the Board would need to deal with before making a final decision regarding the agenda item.

Mr. Hawkins asked Mr. Weiss if there was any potential of getting language that would be suitable or if this is the best they could do.

Mr. Weiss stated that from what Mr. Yedlick had told him, they would not be able to reach a final agreement. The issue of importation of material has been presented and decided adverse to Mr. Yedlick's position. They do not want to say that none of that counts and start over, which is apparently what Mr. Yedlick wants. He can raise it and note it for the record and they can state that it has already been decided and move on. He should be bound by the Board's previous decisions.

Mr. Yedlick felt Mr. Weiss had characterized the issues quite differently. He felt that Mr. Molitor had characterized them more correctly. He felt there was no language in the settlement agreement for Mr. Weiss to object. The language was in the Martin Marietta application.

Mr. Dierckman felt that if Mr. Yedlick thought he has a case then he should prosecute the case in a Court of Law. It was frivolous and well documented. The Board would be put in a position to hear arguments that they have already settled in the past.

Mrs. Torres agreed with Mr. Dierckman that they were going round and round an issue that has been decided.

Mr. Dierckman stated that by making a motion to agree to the schedule, they would basically be agreeing for Mr. Yedlick to withdraw the lawsuits and the Board to hear it again.

Mr. Molitor stated that if the Board did not want to make a motion to adopt the schedule, he would recommend that the Board at least set a meeting for December 12 in order to consider Martin Marietta, switching the date from December 26. That gives the parties six weeks to prepare.

Mrs. Torres moved to switch the December Board meeting from December 26 to December 12, 2005 and the parties can submit their material without a proposed schedule. The motion was seconded by Mr. Dierckman and **APPROVED 4-0**, with Mr. Broach abstaining.

H. Public Hearing.

Mr. Dierckman moved to suspend the rules on the 25 day notice for Item 1h. The motion was seconded by Mrs. Torres and **APPROVED 5-0**.

1h. Nathan Hawkins Addition, lot 5 - Bob Wilson Consulting

The applicant seeks the following development standards variance:

Docket No. 05090013 V ZO Chapter 23D.03.A.1(a)(iii) over 70% lot coverage

The site is located at 210 N Range Line Rd. It is zoned B-1/Business and is within the Old Town Overlay. Filed by Penny Pruett for Bob Wilson Consulting.

Present for the Petition: Robert Wilson, President Bob Wilson Consulting, 210 N. Range Line Road, Carmel. They had bought the property in 2001 and made improvements. Two things have happened. One of the parking spaces is too small for a car and there are two green space islands that are about 10-foot by 12-foot. The challenge is keeping the spaces green. It would take thousands of dollars for

underground watering or move sprinklers around. Secondly, the business has grown and they could use a couple more parking spaces. He would like to remove the grass spaces and replace them with asphalt.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Public Hearing was closed.

Mrs. Conn gave the Department Report. The lot coverage is calculated by using the building footprint and also the percent of the lot that is paved with asphalt. From the aerial photo, it shows that most of the lot is already paved. The Department and Urban Forester are not in favor of this variance. The Urban Forester is concerned with drainage issues and loss of greenspace within Old Town overall. There may be too much use on this site. If the variance is granted, it may set a negative precedent in Old Town that paving the whole site is okay. The Department recommends negative consideration of this docket. Attached to the Department Report is an email from the Urban Forester suggesting possible ways to remediate the issue if the variance were granted. He suggested replacing the greenspace with pervious pavers with structural soils and providing greenspace in proportion with the amount of area that is paved over the 70%.

Mr. Dierckman asked about other paved space that could be exchanged for greenspace.

Mr. Wilson stated that they used the garage for storage and could not take it down. He felt they had more greenspace than the business across the street. All the spaces that are able to be green are green. They waste water to try to keep the grass green.

Mrs. Torres asked about the small parking space location and if it could be made into greenspace and the number of parking spaces in front.

Mr. Wilson stated that is was on the southeast part of the lot. There are four spaces between the two islands and two further west of the two islands. He shared a diagram of the lot. He would like to have more parking and not have to maintain the greenspace with garden hoses.

Mrs. Plavchak pointed out the shrub line on the north side of the property and the possibility of increasing it. She asked if Mr. Wilson had set down with the Urban Forester for solutions.

Mr. Wilson felt that he was not very forthcoming with ideas.

Discussion continued about other paved space that could be exchanged for greenspace.

Mr. Dierckman stated that it was important when this kind of property was used for business, that it be the proper size for the structure and the amount of traffic.

Mr. Wilson agreed to look at other areas of his asphalt area that could be ripped up and made into greenspace. He pointed out the utility pole in the larger greenspace area. Mr. Wilson **TABLED** his petition to the next meeting.

2h. Hamilton Crossing East

The applicant seeks the following for signage:

Docket No. 05080041 CA commitment amendment

The site is located at the southeast corner of 126th St. and US 31.

The site is zoned B-2/Business, within the US 31 Overlay.

Filed by Paul Reis of Drewry Simmons Vornehm for KRG Hamilton Crossing, LLC.

Present for the Petitioner: Paul Reis, Drewry Simmons Vornehm, 8888 Keystone Crossing, Suite 1200, Indianapolis. Also present were Terry Pastorine, J P Morgan Chase, and Eric Strickland, Kite Realty Group. The center consists of three buildings. In 1999 Duke Realty requested a variance with respect to the size of certain walls signs for tenants within the center. At that time, Duke committed to the BZA that tenants occupying less than 4500 square feet of space in Buildings B or C would not be permitted to have a wall sign facing Pennsylvania Street. Currently Kite has entered into a lease of 3699 square feet with J P Morgan Chase for the establishment of a branch bank in Building B. The Special Study Committee has approved the ADLS Amendment to add on some drive-thru facilities and for the signage that is proposed this evening on the east façade of the building. An architectural drawing was shown of the drive-thru facility and the proposed location of the sign. A spec sheet of the sign was shown. The proper signage is needed on the east façade in order to properly identify the location of the bank as well as the drive-thru facilities. The proposed amendment to the Commitment would allow tenants of less than 4500 square feet in Buildings B or C to have a wall sign, but only upon the approval of two things by the Plan Commission. The sign itself and the ADLS package would both need approval. They believe this amendment preserves the prohibition of wall signs along Pennsylvania without the review and scrutiny of the Plan Commission. The Department Report recommended that the number of signs be limited to the BZA's discretion. He had a revised Commitment for the Board's consideration that would allow that any new signs would have to go through ADLS approval, but the ultimate approval to allow the sign on the east façade would be left up to the BZA. Upon approval of the amendment, it would be recorded in the office of the Recorder of Hamilton County and would run with the land.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. In 1999 four of the tenants were allowed to have signs facing Pennsylvania. The Department would like the Board to look at the number of signs they would feel comfortable facing Pennsylvania. With that, the Department recommended positive consideration.

Mr. Dierckman asked if they could automatically have signage on the west side.

Mr. Reis confirmed that. The number of signs on the east façade remains limited.

Mr. Dierckman did not see any reason to change the commitment and encouraged the rest of the Board to adhere to the prior BZA findings.

Discussion followed regarding the amount of space for this tenant. With the drive-thru facilities added, the tenant would be well in excess of 4500 square feet.

Mr. Molitor stated the Board could adopt a finding and there would be no need to amend the Commitments.

The Petitioner **WITHDREW: Docket No. 05080041 CA: Commitment Amendment** for signage.

Mr. Dierckman moved to approve that the space occupied by Chase Bank exceeds 4500 square feet, therefore, they are allowed to have signage on the east façade and the staff is directed to issue the sign permit in accordance with the findings. The motion will carry with the property. The motion was seconded by Mr. Broach.

Mr. Molitor stated the Board would need to suspend the rules to take a vote by show of hands instead of a written ballot.

Mr. Dierckman moved to suspend the rules to take a vote by show of hands. The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

The motion to approve the Chase Bank signage was **APPROVED 5-0.**

3h. West Carmel Center, Blk C, lot 1- Maplecrest Commons

The applicant seeks the following development standards variance:

Docket No. 05090014 V ZO Chapter 25.07-02-09.b signage oriented west

The site is located just west of Commerce Dr & Carwinion Way.

The site is zoned B-3/Business, within the US 421 Overlay.

Filed by Mike Jett of American Consulting, Inc. for PR Block C, LLC.

Present for the Petitioner: Alen Fetahagic, American Consulting, Inc., 7260 Shadeland Station, Indianapolis. They would like the signage to face the west side instead of the permitted east side. The east side faces Commerce Drive and a residential area. The west side faces toward Michigan Drive and more customer traffic.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The sign would be the permitted size and color. The Department recommended positive consideration.

Mr. Dierckman moved to approve **Docket No. 05090014 V, West Carmel Center, Blk C, lot 1 – Maplecrest Commons.** The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

4h. TABLED ~~Ritz Charles, Reception Tent~~

~~The applicant seeks the following use variance approval:~~

~~**Docket No. 05090023 UV ZO Chapter 23B.03 permitted uses**~~

~~The site is located at 12156 N Meridian St. and is zoned S2/Residence & B6/Business within the US 31 Overlay. Filed by Dave Coots of Coots, Henke & Wheeler for Ritz Charles.~~

5-6h. TABLED ~~Martin Marietta Materials – Mueller Property South~~

~~Petitioner seeks special use approvals to establish surface limestone operations & an artificial lake on 96.921± acres.~~

~~Docket No. 05090003 SU Chapter 5.02.02 mineral extraction~~

~~Docket No. 05090004 SU Chapter 5.02.02 artificial lake~~

~~The site is located at the southwest corner East 106th Street and Hazel Dell Parkway.~~

~~The site is zoned S-1/Residence – Low Density.~~

~~Filed by John Tiberi of Martin Marietta Materials, Inc.~~

I. Old Business.

1i. WITHDRAWN

~~**Carmel Science and Technology Park, Blk 11 – Medical Office Bldg**~~

~~The applicant seeks the following development standards variances:~~

~~Docket No. 05080032 V ZO Chapter 25.07.02 10(d)(i) directory sign height~~

~~The site is located at the southwest corner of Carmel Dr. & Guilford Rd. and is zoned M-3/Manufacturing. Filed by Mary Solada of Bingham McHale for BW Partners.~~

There was no other Old Business.

J. New Business.

Mr. Molitor reminded the Board of the special meeting scheduled for December 12, 2005 in place of the regular December 26 meeting. The staff will endeavor to clear that agenda of anything other than the Martin Marietta petition. The petitioner and remonstrator will need to fend for themselves on how they submit their arguments to the Board. Unless they have further input on the rough draft of the settlement agreement, he did not see a need for another Executive Session before that date.

Mrs. Conn will amend the office and website calendars for the December meeting date.

K. Adjourn.

Mrs. Torres moved to adjourn. The motion was seconded by Mr. Hawkins and **APPROVED 5-0**. The meeting was adjourned at 7:15 PM.

James R. Hawkins, President

Connie Tingley, Secretary